

***United States Court of Appeals
for the Second Circuit***



**PETITIONER'S
BRIEF AND
APPENDIX**

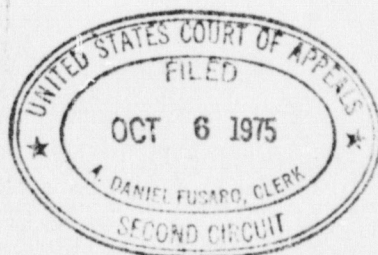
75-4077

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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RAUL FILMENTOR AGUILAR-CISNEROS, :
Petitioner, :
-against- :
IMMIGRATION AND NATURALIZATION SERVICE, :
Respondent. :
----- x

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P/S

PETITIONER'S BRIEF AND APPENDIX



WILLIAM H. OLTARSH
Attorney for Petitioner
225 Broadway
New York, N.Y. 10007

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

September Term 1975
Docket No. 75-4077

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RAUL FILMENTOR AGUILAR CISNEROS,	:
Petitioner,	:
-against-	:
IMMIGRATION AND NATURALIZATION SERVICE,	:
Respondent.	:
	:

----- x

PETITIONER-APPELLANT'S BRIEF

STATEMENT OF THE ISSUES

1. WHERE IT APPEARS THAT ILLEGALLY OBTAINED EVIDENCE IS USED BY THE GOVERNMENT, IS IT THE DUTY OF A TRIAL COURT TO ENTERTAIN A MOTION FOR THE SUPPRESSION OF SUCH EVIDENCE?
2. DID THE IMMIGRATION JUDGE ERR IN REFUSING A PROPER REQUEST TO SUBPOENA THE ARRESTING OFFICERS?
3. SHOULD THE IMMIGRATION JUDGE HAVE TERMINATED THE PROCEEDINGS FOR FAILURE OF PROOF?

STATEMENT OF THE CASE

Pursuant to Sec. 106(a) of the Immigration & Nationality Act, 8 U.S.C. Sec. 1105(2), petitioner petitions this

Court for review of a final order of deportation entered against him by the Board of Immigration Appeals on March 26, 1975.

STATEMENT OF THE FACTS

Petitioner-Appellant is a native and citizen of Ecuador, who entered the United States on or about December 3, 1972 at California, at which time he was not in possession of an immigrant visa.

In May 1974 he was arrested by Immigration officers without a warrant and/or without reasonable or probable cause. He was served with an Order to Show Cause why he should not be deported because it was alleged by the Immigration Service that he was not in possession of a valid immigrant visa or other entry document for permanent residence.

At the deportation hearing the petitioner served the Immigration Service with a motion to suppress all of the evidentiary "fruit" resulting from the illegal arrest; also the petitioner requested the arresting officers be subpoenaed to give testimony to support petitioner's claim of the illegal arrest. Under the Freedom of Information Act the petitioner demanded to see all of the notes and memoranda relating to this case which formed any basis for the apprehension of the petitioner; and also for the names and addresses of any alleged informants relating to petitioner's arrest.

The Immigration Judge denied each of the aforementioned motions, viz., he found the petitioner deportable on the strength of his testimony, which he admitted over objection and over the motion by petitioner's counsel to suppress the testimony as the "fruit" of a poisoned tree because of an illegal arrest. The Judge admitted the testimony without permitting the petitioner to prove that an illegal arrest had taken place by allowing a subpoena to issue to the arresting officers. An inspection of the Service's records by virtue of the Freedom of Information Act also should have been permitted.

The Immigration Judge granted voluntary departure.

Appeal was timely made to the Board of Immigration Appeals and on the 26th of March, 1975 the Board of Immigration Appeals affirmed the findings of the Immigration Judge. The Board noted that no evidence was offered in support of a motion to suppress. Instead the respondent testified and his testimony established the charges, the Board held. The Board failed to note that no evidence was offered because the Judge had not permitted the evidence to be developed in the manner petitioner chose. The Judge denied the subpoena of indispensable witnesses, the arresting officers; and he refused to permit the petitioner to inspect

documents which belonged to the Immigration Service and which were necessary and indispensable to petitioner's proof; to wit, to prove that no reliable informer or other reasonable basis existed for the arrest of this petitioner. The petitioner did indeed testify. But his testimony was objected to and the Board of Immigration Appeals failed to decide the issue of whether this was lawful, substantive testimony, or whether it should not have been suppressed because of the manner in which it was obtained.

This appeal is from the order made by the Board of Immigration Appeals made on March 26, 1975.

I.

ARGUMENT

WHERE IT APPEARS THAT ILLEGALLY OBTAINED EVIDENCE IS USED BY THE GOVERNMENT IT IS THE DUTY OF A TRIAL COURT TO ENTERTAIN A MOTION FOR THE SUPPRESSION OF SUCH EVIDENCE.

Before an alien can be lawfully excluded or deported, the burden of proving the charge is on the Immigration Service. Kwong Hai Chew v. Rogers, 257 F. 2d. 606 (D.C. Cir. 1958), Matter of Becerra-Miranda, 12 I & N Dec. 358 (BIA 1967).

In the case at bar the only evidence presented of the petitioner's status was obtained by his own testimony, all properly objected to before he testified. This testimony would not have come about but for an illegal arrest. The petitioner was unable to prove the illegal arrest because the Trial Judge

refused him the means to prove it. The Trial Judge refused his request to subpoena indispensable witnesses, the arresting officer, and refused his request to examine his file which would have been used to prove there was no legal justification for this arrest.

For the purpose of this issue, we must assume that the petitioner would have been able to prove that there was an illegal arrest since the Immigration Judge denied him as a matter of law those rights which should be available to him under due process. If we take it that the Government's evidence has thus been illegally procured, not only must all of the evidence resulting from the arrest be suppressed but also any evidence derived from the information thus illegally obtained. Nardone v. U.S., 308 U.S. 338 (1939); Wong Sun v. U.S., 371 U.S. 471 (1963). Once the use of an illegal technique is shown by the government the burden shifts to the government to show that the evidence it relied on was not obtained directly or derivatively from the tainted source. See Gelbard v. U.S., 408 U.S. 41 (1972).

II.

THE IMMIGRATION JUDGE ERRED IN REFUSING A PROPER REQUEST TO SUBPOENA THE ARREST- ING OFFICERS.

Subpoenas in deportation proceedings are issued by the Immigration Judge having jurisdiction over the matter, either upon his own initiative or the written application of

either party. 8 C.F.R. 287.4(a)(2). The petitioner showed both in writing and by stating orally what he expected to prove by these witnesses. The Immigration Judge in denying this subpoena, deprived the petitioner of the means to prove that the arrest was without probable cause. In United States v. Brignoni-Ponce, No. 74-114, June 30, 1975, the Supreme Court held that the Fourth Amendment forbids the stopping of persons for questioning about their citizenship on less than a reasonable suspicion that they may be aliens. The Supreme Court held here that the Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest. The Fourth Amendment requires that such brief detention or seizure be "reasonable". The effect of the Brignoni decision is to limit exercise of the authority granted by Section 287 of the Immigration & Nationality Act. Persons may be stopped only if the officers are aware of specific articulable facts, together with rational inferences from those facts that reasonably warrant suspicion that the aliens may be illegally in the country. Au Yi Lau v. Immigration & Naturalization Service, 445 F. 2d. 217 (D.C. Cir.) cert. den. 404 U.S. 864 (1971).

By not permitting the subpoena of the arresting officers or the examination of notes and memoranda relating to this case which formed any basis for the detention and seizure of the petitioner, the Judge was not allowing the pe-

petitioner to show that the arresting officers lacked specific articulable facts which together with rational inferences reasonably warrant a suspicion that this alien was illegally in the U.S.

The Immigration Judge also posed this alien an insoluble dilemma. If the petitioner had testified that the officers arrested him without articulable facts and thereby had proved that he was arrested illegally, the Judge would have found him deportable because he would have freely admitted that he had come into the country without a proper visa. Instead the petitioner chose not to testify except over objection with the result that the Judge held him to his testimony notwithstanding the objection of his counsel and also found he had not carried his burden of proof because he did not testify as to the unreasonableness of the officers' arrest. When, however, the petitioner sought to prove this illegal arrest through the mouths of the arresting officers, the Judge refused to subpoena them.

THE IMMIGRATION JUDGE SHOULD HAVE TERMINATED THE PROCEEDINGS FOR FAILURE OF PROOF.

No legal evidence was presented to prove the alienage and unauthorized stay of petitioner in the U.S. The Immigration & Nationality Act, Sec. 291 Act of 1952, 8 U.S.C. Sec. 1361 holds that the time, place and manner of entry into the

United States must be proved by the government. The burden cannot be fulfilled by a mere accusation, unless admitted by the alien. The burden of proof can only be satisfied by evidence produced at the hearing. The Immigration Judge refused to permit the petitioner to prove the illegal arrest in the manner the petitioner chose to, and elicited admissions after objection by his counsel. The government thereby sought to prove its case on the basis of the "fruit" of an illegal arrest since the very knowledge of petitioner's identity came about as a result of an unlawful arrest. This the government may not do. Weeks v. U.S. 1914, 232 U.S. 383.

The Immigration Judge did not afford the petitioner a fair opportunity to be heard and the right to present witnesses and evidence. Chin Yow v. U.S., 1908, 208 U.S. 8. This deprived him of procedural due process. There must be a fair hearing conducted in good faith before an alien is ordered deported. It is not competent for any administrative agency to cause an alien, even if it is alleged that he is illegally here, to be taken into custody and deported without giving him an opportunity to be fully heard and fairly heard and without granting him all of the rights to which due process of law entitle him. Japanese Immigrant Cases, 1903, 189 U.S. 86.

CONCLUSION

The decision of the Board of Immigration Appeals

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should be reversed and the deportation proceedings dismissed and terminated.

Respectfully Submitted,

WILLIAM H. OLTARSH,
Attorney for Petitioner-Appellant

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RECORD OF PROCEEDINGS, DEPORTATION PROCEEDINGS

RAUL FILMENTOR AGUILAR-CISNEROS

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United States Department of Justice

Board of Immigration Appeals

Washington, D.C. 20530

MAR 26 1975

File: A21 765 277 - New York

In re: RAUL FILMENTOR AGUILAR-CISNEROS

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: William H. Oltarsh, Esq.
225 Broadway
New York, New York 10007

CHARGES:

Order: Sec. 241(a)(1), I&N Act (8 U.S.C. 1251(a)(1))
- Excludable at entry, immigrant not in
possession of valid immigrant visa

APPLICATION: Voluntary departure

This is an appeal from an order of an immigration judge finding the respondent deportable and granting him voluntary departure. The appeal will be dismissed.

The record relates to a male alien, native and citizen of Ecuador, who entered the United States near San Ysidro, California, on or about December 3, 1972, at which time he was not in possession of a valid immigrant visa or other entry document.

Our review of the record, including counsel's brief on appeal, satisfies us that the hearing was fair, that deportability has been established by evidence that is clear, convincing and unequivocal, and that the immigration judge properly applied the pertinent legal principles.

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A21 765 277

In passing we note that in connection with counsel's motion to suppress, no evidence was offered in support of that motion. Instead, the respondent testified and his testimony establishes the Immigration and Naturalization Service charges.^{1/} Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

FURTHER ORDER: Pursuant to the immigration judge's order, the respondent is permitted to depart from the United States voluntarily within 30 days from the date of this order or any extension beyond that time as may be granted by the District Director; and in the event of failure so to depart, the respondent shall be deported as provided in the immigration judge's order.

Chairman

^{1/} Although counsel objected, the respondent personally made no claim of self-incrimination.

RECEIPT FOR CERTIFIED MAIL — 30. (plus postage)

Bd of Immigr Appeal
Immigr & Nat. Svce

20 West Bway,

New York, N. Y. 10007

June 12, 1974

Immigration & Naturalization Service
20 West Broadway
New York, N. Y. 10007

Attt Special Inquiry Section

Re - Aguilar-Cisneros, Raul F.
A 21 765 277

Gentlemen:

I enclose herewith Notice of Appeal in the above captioned case, filing fee in the sum of \$25.00, and notice of appearance as attorney.

Please forward to me the transcript of the testimony given at the hearings held on June 7, 1974. I wish to request a period of ten (10) days after the receipt of this transcript by me in order to file a memorandum of law.

With thanks for your courtesy, Y am

Re: m Aguilar-Cisneros appeal

SENDER: Be sure to follow instructions on other side

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S)
(Additional charges required for these services)

☐ Show address
where delivered

☐ Deliver ONLY
to addressee

RECEIPT

Received the numbered article described below

REGISTERED NO.

CERTIFIED NO.

958093

INSURED NO.

DATE DELIVERED

6/28/74

SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)

very truly,

AM H. OLTARSH

03

NOTICE OF APPEAL TO THE BOARD OF IMMIGRATION APPEALS

SUBMIT IN TRIPLICATE TO:
IMMIGRATION AND NATURALIZATION SERVICE
20 West Broadway
New York, N. Y. 10007

Fee Stamp

In the Matter of:

AGUILAR-CISNEROS, Raul
Filamentor

File No.

A 21 765 277

1. I hereby appeal to the Board of Immigration Appeals from the decision, dated June 7, 1974,
in the above entitled case.

2. Briefly, state reasons for this appeal.

- a. Refusal by the Immigration Judge to conduct a separate hearing pursuant to the motion to suppress;
- b. Failure to subpoena and produce at the hearing material witnesses although the Immigration Judge was requested to do so;
- c. Refusal of the Judge to permit respondent and his attorney to inspect the file pursuant to Freedom of Information Act, sec.552 (b)(7);
- d. Failure of the Judge to base his determination on legal evidence only which was produced at the inquiry;
- e. Failure on the part of the Immigration Service to carry burden of proof to establish that respondent is an alien unauthorized to remain in the U. S.

3. I do not desire oral argument before the Board of Immigration Appeals in
(do) (do not)
Washington, D. C.

4. I am filing a separate written brief or statement.
(am) (am not)

Signature of Appellant (or attorney or representative)

WILLIAMM. OLTARSH

(Print or type name)

225 Broadway, New York N. Y.
10007

Address (Number, Street, City, State, Zip Code)

June 12, 1974

Date

IMPORTANT: SEE INSTRUCTIONS ON REVERSE SIDE OF THIS NOTICE

04

U. S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
Board of Immigration Appeals
20 West Broadway
New York, N. Y. 10007

In the Matter of

Raul Filmentor Aguilar-Cisneros,

A 21 765 277

Respondent

BRIEF FOR THE RESPONDENT

THE FACTS

The respondent was served with an order to show cause why he should not be deported from the United States as a result of having been arrested without a warrant and without reasonable suspicion or probable cause by an Immigration Officer. At a hearing held at the Immigration & Naturalization Service on May 31, 1974, respondent served the Immigration & Naturalization Service with a motion to suppress all of the evidence which the Immigration Service had ascertained as a result of said illegal arrest, search and seizure. In the same motion the respondent demanded that the arresting officers be subpoenaed and produced at the hearing because the respondent wished to question these witnesses in order to prove his claim of illegal arrest, search and seizure, and under the Freedom of Information Act, Sec. 552 (b)(7), the respondent demanded to see all of the notes and memoranda relating to this

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case which formed any basis for the detention and seizure of the respondent and also for the names and addresses of any alleged informants relating to this detention and seizure.

The Immigration Judge at the deportation hearing refused to conduct a separate hearing on the motion to suppress and refused to subpoena or produce at the hearing the arresting officers and refused to permit respondent to inspect the notes and memoranda of the Immigration Service relating to this case. Over the objections of respondent's counsel, the Immigration Judge interrogated the respondent and such evidence of alienage and unauthorized stay in the United States was only ascertained by the Immigration Judge through questions which were objected to.

The Immigration Judge granted voluntary departure on or before July 7, 1974 or any extension beyond such date as may be granted by the District Director and under such conditions as the District Director shall direct.

THE LAW

Since 1914 the Supreme Court has held as a rule of constitutional law that materials obtained as a result of unlawful search and seizure may not be used in a Federal court. Weeks v. U. S., 1914, 232 U.S. 383. Since 1961 such materials cannot be used in a State court. Mapp v. Ohio, 1961, 367 U. S. 643. Where it appears that illegally obtained evidence is used by the Government, it has been held that it is the duty of a trial court to entertain a motion for the exclusion or suppression of such evidence. Gould v. U. S., 1921, 255 U. S. 298. See Federal Rules of Criminal Procedure, Rule 41(a).

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The Fourth Amendment applies to administrative proceedings as well as to court proceedings. The Immigration Judge erred and denied due process to the respondent in not granting a hearing on the motion to suppress and as a result thereof violated the respondent's rights under the Fourth Amendment to the Constitution.

The Immigration Judge erred in not permitting the respondent to subpoena the arresting officers. Subpoenas in deportation proceedings are issued by the Immigration Judge having jurisdiction over the matter, either upon his own initiative or the written application of either party. 8 C.F.R. 287.4 (a)(2). The respondent showed both in writing and orally what he expected to prove by said witnesses. The Immigration Judge in denying this right to respondent denied him his constitutional rights as well as his rights under the Immigration Law.

The Immigration Judge also erred in denying the application under the Freedom of Information Act, Sec. 552 (b)(7) to permit the respondent to examine all the notes and memoranda relating to this case which formed any basis for the detention and seizure of the respondent.

The Immigration Judge erred in not dismissing the case against respondent in that no legal evidence was presented to prove the alienage and unauthorized stay of respondent in the United States. The Government has the burden of proving deportability. The statute, Sec. 291, Act of 1952, 8 U.S.C., sec. 1361, holds that the time, place and manner of entry into the United States must be shown by the Government. The burden cannot be fulfilled by a mere accusation

in the order to show cause, unless admitted by respondent, but can only be satisfied by evidence produced at the hearing. No admission was made by this respondent except by questioning by the Immigration Judge after objection by respondent's attorney. Respondent's attorney sought a hearing to suppress all the evidence resulting from said unlawful search and seizure. Inasmuch as the knowledge of respondent's identity came about only as a result of an unlawful arrest, search and seizure, the proof on the part of the Government is completely lacking in that no proof was adduced in the deportation hearing which was not the result of the illegal arrest, search and seizure.

The Immigration Judge refused to permit respondent to prove the illegal arrest, search and seizure in a separate hearing, which was his constitutional right, and in addition elicited such admissions from respondent only after objections by the respondent's attorney. It is horn book law that the Government may not prove its case on the basis of illegal evidence. Weeks v. U. S., supra; Mapp v. Ohio, supra.

It is settled law that an alien is entitled to procedural due process. An alien must be given an opportunity to be heard, and the right to present witnesses and evidence. Chin Yow v. U. S., 1908, 208 U. S. 8.

There must be a fair hearing conducted in good faith before an alien is ordered deported. It is not competent for any administra-

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tive agency arbitrarily to cause an alien, even if it is alleged that he is illegally here, to be taken into custody and deported without giving him an opportunity to be fully heard and fairly heard and without granting him all of the rights to which due process of law entitle him. Japanese Immigrant Cases, 1903, 189 U. S. 86.

CONCLUSION

It is respectfully submitted that the Immigration Service failed in its proof and that the order of the Immigration Judge should be vacated and this matter dismissed.

Respectfully submitted,

William H. Oetaken
WILLIAM H. OETAKEN,
Attorney for Respondent

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File: A21 765 277 - New York

JUN 7 1974

In the Matter of)

DALE FILMINTOR CISNEROS AGUILAR)

IN DEPORTATION PROCEEDINGS

Respondent)

CHARGE:

I & N Act - Section 241(a)(1), 8 USC 1251(a)(1) -
Excludable at entry - Immigrant - No visa

APPLICATION:

Voluntary Departure

In Behalf of Respondent:

William Oltarsh, Esq.
225 Broadway
New York, N. Y. 10007

In Behalf of Service:

John F. Ruggiero, Esq.
Trial Attorney

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is an alien, a native and citizen of Ecuador who entered the United States at San Pedro, California on or about December 3, 1972 with the intention of taking employment in the United States and supporting his family in Ecuador. His testimony in this respect is clear, convincing and unequivocal and is uncontradicted by any material in the record. The respondent has selected Ecuador as the country to which he desires to be sent if deported. Respondent, through counsel, has not conceded the allegations set forth in the Order to Show Cause but the respondent has testified openly, candidly, honestly. I am satisfied that the allegations set forth are true. The record fully establishes

that he was an immigrant when he last entered the United States but also on a prior trip to the United States when he entered as a visitor and remained for a period of two and a half years. He last entered the United States after having been smuggled into the United States upon payment in the amount of \$200 to someone near the Mexican border. He is deportable as charged.

The respondent has applied for voluntary departure although his attorney made no such application. The respondent, through his counsel, has filed a paper which will be identified in the record as Exhibit 2. This purports to be a motion in which counsel seeks to suppress evidence and to produce testimony of witnesses regarding matters which have no materiality in this hearing whatsoever. This is obviously a tactic of delay which is obviously unwarranted in the record and which the respondent has, in any event, made totally irrelevant. The only evidence is respondent's own voluntary testimony before me.

Apparently relying on obfuscation counsel has chosen to make no application for relief a tactic which I regard as not in the best interest of his client and not in the best interest of the enforcement of the immigration laws and the obligation to counsel to be candid with the court. I am not satisfied that his objections are made in good faith. I am convinced they have no basis in logic or law. Their purpose is obvious. Nevertheless, I shall not penalize his client who has obviously acted in this hearing with candor and honesty. I will authorize voluntary departure notwithstanding the extraordinarily bad immigration record

of this respondent because, at least at this point in time, he is being an honest man. Taking into account that honesty and that candor, a valuable asset in this world today. I will authorize voluntary departure notwithstanding his counsel's failure to make the application.

ORDER: IT IS ORDERED that in lieu of an order of deportation respondent be granted voluntary departure without expense to the government on or before July 7, 1974 or any extension beyond such date as may be granted by the District Director, and under such conditions as the District Director shall direct.

IT IS FURTHER ORDERED that if respondent fails to depart when and as required the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following order shall thereupon become immediately effective: respondent shall be deported from the United States to Ecuador on the charge contained in the Order to Show Cause.

FRANCIS J. LYONS
Immigration Judge

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UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

MATTER OF

FILE A- 21 765 277 - New York

RAUL FILMENTOR CISNEROS AGUILAR

IN DEPORTATION PROCEEDINGS

Respondent

TRANSCRIPT OF HEARING

Before: FRANCIS J. LYONS, Immigration Judge

Date: JUNE 7, 1974 Place: 20 West Broadway, New York, N.Y. 10007

Transcribed by Sylvia Katz Recorded by Dictabelt

Official Interpreter Anthony Alvarenga

Language Spanish

APPEARANCES:

For the Service:

John P. Ruggiero, Esq.

Trial Attorney

New York, N. Y. 10007

Station

For the Respondent:

William Oltarsh, Esq.

225 Broadway

New York, N. Y. 10007

1 IMMIGRATION JUDGE TO RESPONDENT: (Through Interpreter)
2 Q What is your name?
3 A Raul Filmentor Cisneros Aguilar.
4 Q And Mr. Oltarsh is your attorney?
5 A Yes.
6 IMMIGRATION JUDGE: Mr. Oltarsh are you ready?
7 MR. OLTARSH: Yes sir.
8 IMMIGRATION JUDGE TO RESPONDENT:
9 Q Will you stand and raise your right hand. Do you solemnly swear the
10 testimony you will give in this proceeding will be the truth, the whole
11 truth and nothing but the truths so help you God?
12 A I do.
13 IMMIGRATION JUDGE: Sit down.
14 Mr. Oltarsh, on behalf of your client do you concede service of the
15 Order to Show Cause?
16 MR. OLTARSH: Yes.
17 IMMIGRATION JUDGE: Do you waive the reading of the contents?
18 MR. OLTARSH: Yes.
19 IMMIGRATION JUDGE: And on his behalf do you concede the truth of the five
20 factual allegations in the Order?
21 MR. OLTARSH: We concede no facts in the Order, your honor. We question the
22 government to prove its case. Before we commence I wish to offer a
23 motion to suppress the evidence herein and to dismiss the proceedings
24 and am offering a notice to you sir, and to the attorney for the
25 Immigration Service.
26 IMMIGRATION JUDGE: All right, let me have it. I'll reserve decision on it.

1 IMMIGRATION JUDGE: Go ahead Mr. Ruggiero.
2 MR. RUGGIERO TO RESPONDENT:
3 Q Mr. Aguilar where were you born?
4 MR. OLTARSH: I object to the question.
5 IMMIGRATION JUDGE: Overruled. Answer the question.
6 RESPONDENT: In Ecuador.
7 MR. RUGGIERO TO RESPONDENT:
8 Q Were your parents ever natives or citizens of the United States?
9 MR. OLTARSH: I object to the question.
10 IMMIGRATION JUDGE: Overruled. Answer the question.
11 RESPONDENT: No sir.
12 MR. RUGGIERO TO RESPONDENT:
13 Q Were you ever issued a visa for permanent residence in the United States
14 at any time?
15 MR. OLTARSH: I object to the question.
16 IMMIGRATION JUDGE: Overruled. Answer the question.
17 RESPONDENT: No sir.
18 MR. RUGGIERO TO RESPONDENT:
19 Q Were you ever issued any visa for entry into the United States by an
20 American Consul abroad?
21 MR. OLTARSH: I object to the question.
22 IMMIGRATION JUDGE: Overruled.
23 RESPONDENT: Yes.
24 MR. RUGGIERO TO RESPONDENT:
25 Q You were issued a visa?
26 MR. OLTARSH: I object to the question.

15

1 IMMIGRATION JUDGE: Overruled.

2 RESPONDENT: Yes.

3 MR. RUGGIERO TO RESPONDENT:

4 Q At what Consul did you apply for the visa and who issued it, or was it
5 issued? Were you issued a visa?

6 MR. OLTARSH: May I interrupt for a second. It is relevant that I object to
7 every question. Incidentally, I would like to present now an objection
8 to all questions asked.

9 IMMIGRATION JUDGE: All right, I'll consider that you are objecting to each
10 and every question. Unless I specifically say so, I am overruling your
11 objection in each case.

12 MR. OLTARSH: Thank you sir.

13 MR. RUGGIERO TO RESPONDENT:

14 Q Were you issued a visa?

15 A Yes.

16 Q Where?

17 A Quito, Ecuador.

18 Q When?

19 A I don't remember the exact date, but it was on March 1969.

20 Q What type of visa was it, if you know?

21 A A tourist visa.

22 Q Did you use that visa to come to the United States?

23 A Yes, I did.

24 Q Did you come to the United States with that visa?

25 A On April 5, 1969.

26 Q Did you depart from the United States after that entry?

16

1 A Yes.

2 Q When did you leave the United States?

3 A I left on October 24, 1971.

4 Q When did you come to the United States again after that departure?

5 A I arrived in this country on September 3, 1972.

6 Q Did you have a visa at that time?

7 A No.

8 Q Of any kind?

9 A No.

10 Q How did you enter the United States on that occasion?

11 A For three months.

12 Q Yes, but how?

13 A By an automobile.

14 Q Who's automobile?

15 A Some unknown guy.

16 Q Did some unknown guy take you across the border for a price that you

17 paid him?

18 A Yes.

19 Q When you were in Mexico did you actually try to find this person so

20 that you could get into the United States?

21 A No.

22 Q How much did you pay him?

23 A \$200.

24 Q Did he take you across the border?

25 A Yes.

26 Q For what purpose were you coming to the United States at that time?

-4-
TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

17

1 A To look for a future to help my children.
2 Q Did you come here to work?
3 A Yes.
4 Q And to stay as long as you could and work here?
5 A No.
6 Q For how long did you intend to stay here in the United States and work?
7 A For some time and go back.
8 Q At the time you came into the United States did any American Immigration
9 Officer speak to you personally?
10 A No.
11 MR. RUGGIERO: I have no further questions.
12 IMMIGRATION JUDGE: Mr. Oltarsh, do you have any questions?
13 MR. OLTARSH: I have no questions for the respondent at this time.
14 IMMIGRATION JUDGE TO RESPONDENT:
15 Q Mr. Aguilar in the event you would be deported from the United States
16 you would have the right to name the country that you wish to be sent.
17 If you should be deported from the United States where would you want to
18 be sent?
19 A My country.
20 Q That's Ecuador?
21 A Yes.
22 IMMIGRATION JUDGE: All right, Mr. Oltarsh - are you making any application
23 for discretionary relief?
24 MR. OLTARSH: Sir, I would like to apply for discretionary relief after you
25 have made your decision as to the question of deportability -
26 MR. RUGGIERO: The government objects.

18

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 IMMIGRATION JUDGE: If you wish to make an application for discretionary
2 relief I am inviting it now. Do you choose not to make an application -
3 that's your choice?
4 MR. OLTARSH: I choose sir to make an application for discretionary relief
5 after you have made a decision on the question of deportability, which
6 is my client's right under the law.
7 IMMIGRATION JUDGE: All right. We refer to 8 CFR 242.17 with relation to
8 discretionary relief. I offer you the opportunity to make that applica-
9 tion now. Do you wish to make an application?
10 MR. OLTARSH: As I previously stated -
11 IMMIGRATION JUDGE: Mr. Oltarsh -
12 MR. OLTARSH: May I be allowed to finish sir?
13 IMMIGRATION JUDGE: Yes.
14 MR. OLTARSH: We have made a motion to suppress the evidence here.
15 IMMIGRATION JUDGE: That's denied.
16 MR. OLTARSH: O.K. We have also made a demand that the arresting officers
17 be subpoenaed and produced here.
18 IMMIGRATION JUDGE: That's denied.
19 MR. OLTARSH: We also asked under the Freedom of Information Act that the
20 file which the government has in its possession be permitted to be in-
21 spected.
22 IMMIGRATION JUDGE: If you want to make an application under the Freedom of
23 Information Act, you should make it under the regulation. I refer you
24 to 8 CFR 103 and if that application is not appropriately made here,
25 it is denied. Do you wish to make an application for discretionary
26 relief?

1 MR. OLTARSH: I do wish to make it -
2 IMMIGRATION JUDGE: Make it.
3 MR. OLTARSH: I will make it when a decision has been made on the question -
4 IMMIGRATION JUDGE: If you choose not to make it sir, I will find your
5 respondent deportable and order him deported. Do you wish to make an
6 application or not?
7 MR. OLTARSH: I stand on what I say.
8 IMMIGRATION JUDGE: In other words you make no application?
9 MR. OLTARSH: I will -
10 IMMIGRATION JUDGE TO RESPONDENT:
11 O Mr. Aguilar, your attorney has asked that I enter an order of deporta-
12 tion in your case against you. He has chosen not to ask that you be
13 ~~given permission to leave without being deported.~~ Do you wish to accept
14 your attorney's advice and an order of deportation, rather than leaving
15 voluntarily at your expense? Although your attorney has not made the
16 application, I will entertain the application for you if you wish to
17 make it - your attorney is not being deported, you are.
18 MR. OLTARSH: Your honor -
19 IMMIGRATION JUDGE: I am trying to protect your client Mr. Oltarsh. If you
20 choose not to make the application - and he wishes to make the application
21 I will entertain the application.
22 MR. OLTARSH: I recognize, your honor, that I am trying to be courteous as
23 far as possible.
24 IMMIGRATION JUDGE: I wouldn't expect you to be otherwise.
25 MR. OLTARSH: Of course sir, but I am following what I consider to be the
26 law.

1 IMMIGRATION JUDGE: Fine, and I am following what I consider to be the law
2 and your obligation under it as well as mine.
3 MR. OLTARSH: I thank you sir.
4 IMMIGRATION JUDGE TO RESPONDENT:
5 Q If I give you permission to leave voluntarily within a period of one
6 month, would you leave within that time?
7 A Yes.
8 IMMIGRATION JUDGE: Mr. Ruggiero, does the government ~~ex~~^{ex}ceed to the respondent's
9 request for a period of voluntary departure of one month?
10 MR. RUGGIERO: Yes.
11 IMMIGRATION JUDGE: Notwithstanding the adverse factors which already are part
12 of the record.
13 MR. RUGGIERO: Yes.sir.
14 IMMIGRATION JUDGE: Mr. Oltarsh, do you have anything further?
15 MR. OLTARSH: No sir.
16 IMMIGRATION JUDGE: All right, this is the decision.
17 NOTE: At this point in the proceedings the Immigration Judge delivered an
18 oral statement of his decision in this matter. This has been transcribed
19 separately and is attached hereto.
20 IMMIGRATION JUDGE TO RESPONDENT:
21 Q Now sir I have given you permission to leave voluntarily, notwithstanding
22 the fact that your attorney has not asked that I give you that privilege.
23 I suggest that you avail yourself of that opportunity because if you fail
24 to do so you will be ordered deported. Do you understand?
25 A Yes sir.
26 IMMIGRATION JUDGE: Mr. Oltarsh, do you waive appeal?

1 MR. OLTARSH: No sir.

2 IMMIGRATION JUDGE: I will furnish you with the forms. Your appeal must be
3 filed no later than June 17th.
4
5
6
7
8
9
10
11

12 I hereby certify that to the best of my knowledge and
13 belief the foregoing pages numbered 1 through 9
14 are a complete and accurate transcript of the above-
15 described proceedings.

16 *Sylvia Katz*
Signature

17 *Transcriber*
Title
18
19
20
21
22
23
24
25
26

UNITED STATES DEPARTMENT OF JUSTICE
Immigration & Naturalization Service,
20 West Broadway,
New York, N.Y. 10007

In the Matter of :
AGUILAR-CISNEROS, Raul Filmentor, : File No. A21 765 277
Respondent. :

- - - - - x

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

PLEASE TAKE NOTICE, that the undersigned, AGUILAR-CISNEROS, Raul Filmentor, will move that the Immigration Service arrested, searched and seized the respondent without a warrant and/or without reasonable or probable cause. The Service will be called upon to assume the burden of justifying the basis and facts upon which it took respondent into custody. The respondent serves notice herewith that he wishes to give sworn testimony at the hearing upon his personal knowledge of the facts which show the illegal arrest, search and seizure.

The respondent herewith also demands that the arresting officers be subpoenaed and produced at the hearing because the respondent wishes to question them because their testimony is relevant and material to the issue of the unreasonable arrest, search and seizure which was made without

probable cause. This is a motion to suppress the evidence illegally obtained.

Under Freedom of Information Act Section 552(b)7 and such other portions of the Act as may be applicable herein; all notes and memoranda relating to this case and which formed any basis for the detention and seizing of the respondent are demanded to be produced or the attorney for the respondent be permitted to inspect the same. Also demanded are the names and addresses of any alleged informants relating to the said detention and seizure of the respondent.

S/S
Aguilar-Cisneros, Raul Filmentor

Sworn to before me this

7th day of June, 1974

WILLIAM H. OLTAROH
NOTARY PUBLIC, State of New York
No 60-2981540
Qualified in Westchester County
Commission expires March 30, 1975

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

No.

ORDER TO SHOW CAUSE, NOTICE OF HEARING, AND WARRANT FOR ARREST OF ALIEN

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA

File No. **A21 765 277**

In the Matter of **AGUILAR-CISNEROS, Raul Filamentor**

Respondent.

Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Ecuador and a citizen of Ecuador;
3. You entered the United States ~~for~~ near San Ysidro, California on December 3, 1972 ^(date) or about December 3, 1972;
4. It was then your intention to remain indefinitely in the United States.
5. You were not in possession of a valid immigrant visa or other entry document for permanent residence.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(1) of the Immigration and Nationality Act, in that, at time of entry you were within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, aliens who are immigrants not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document and not exempted from the possession thereof by said Act or regulations made thereunder, under sec. 212(a)(2) of the Act.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at

20 W. Broadway, New York, N.Y., 11th floor

on May 31, 1974(S) at 1:00 p.m. and show cause why you should not be deported from the United States on the charge(s) set forth above.

WARRANT FOR ARREST OF ALIEN

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I have commanded that you be taken into custody for proceedings thereafter in accordance with the applicable provisions of the immigration laws and regulations, and this order shall serve as a warrant to any Immigration Officer to take you into custody. The conditions for your detention or release are set on the reverse hereof.

Dated:

May 30, 1974

Maurice H. O'Leary
(signature and title of issuing officer)
ACTING DISTRICT DIRECTOR
(City and State)

NEW YORK DISTRICT

25

NOTICE TO RESPONDENT

ANY STATEMENT YOU MAKE MAY BE USED AGAINST YOU IN DEPORTATION PROCEEDINGS

THE COPY OF THIS ORDER SERVED UPON YOU IS EVIDENCE OF YOUR ALIEN REGISTRATION WHILE YOU ARE UNDER DEPORTATION PROCEEDINGS. THE LAW REQUIRES THAT IT BE CARRIED WITH YOU AT ALL TIMES

If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Immigration and Naturalization Service. You should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you should bring the original and certified translation thereof. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Order to Show Cause and that you are deportable on the charges set forth therein. You will have an opportunity to present evidence on your own behalf, to the receipt of evidence and to cross examine any witnesses presented by the Government. Failure to attend the hearing at the time and place designated hereon may result in a determination being made by the Immigration Judge in your absence.

You will be advised by the Immigration Judge, before whom you appear, of any relief from deportation, including the privilege of departing voluntarily, for which you may appear eligible. You will be given a reasonable opportunity to make any such application to the Immigration Judge.

NOTICE OF CUSTODY DETERMINATION

Pursuant to the authority of Part 242.2, Title 8, Code of Federal Regulations, the authorized officer has determined that pending a final determination of deportability in your case, and, in the event you are ordered deported, until your departure from the United States is effected, but not to exceed six months from the date of the final order of deportation under administrative processes, or from the date of the final order of the court, if judicial review is had, you shall be:

☐ Detained in the custody of this Service.

☐ Released on recognizance

☐ Released under bond in the amount of \$

1000.00

XX

You may request the Immigration Judge to redetermine this decision.

REQUEST FOR PROMPT HEARING

To expedite determination of my case, I request an immediate hearing, and waive any right I may have to more extended notice.

☐ I do

☐ do not

request a redetermination by an Immigration Judge of the custody decision.

Before:

(signature of respondent)

(signature and title of witnessing officer)

(date)

CERTIFICATE OF SERVICE

Served by me at _____ on _____ 19 ____ at ____ m.

(signature and title of employee or officer)

26